

### **Remarks**

This responds to the Office Action mailed on September 9, 2005. Claims 1-14 and 16-19 are pending in this application.

#### **The Double Patenting Rejections**

**In item 1) on page 2 of the instant Office Action, the Examiner rejected claims 1-20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,545,034 in view of Spiegelman et al. (U.S. Patent No. 6,552,055). This rejection is respectfully traversed.**

**In item 2 on page 2 of the instant Office Action, the Examiner provisionally rejected claims 1-20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8, 10, and 12-23 of copending Application No. 10/682,790 in view of Spiegelman et al. (U.S. Patent No. 6,552,055). However, it is Applicant's belief, since the Examiner repeated this rejection in item 3), that the Examiner intended, in item 2, to provisionally reject claims 1-20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10, 14-20, 49-50 and 52-54 of copending Application No. 09/634,207 (as was done in the Office Action mailed December 30, 2004). This rejection is respectfully traversed.**

To moot the above two rejections, while not conceding the obviousness of any number of the pending claims over the claims of the '034 patent or the claims of the '207 application taken alone or in combination with the '055 patent, Applicants enclose herewith a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(b)(iv), to overcome these rejections. The Examiner is requested to note that Applicants are disclaiming the terminal part of the statutory term of any patent granted on the above-identified patent application (Serial No. 10/753,665), which would extend beyond the expiration date of the full statutory term, as presently shortened by any terminal disclaimers, of U.S. Patent No. 6,545,034 or the patent to issue from Application Serial No. 09/634,207. Withdrawal of these rejections is therefore appropriate and is respectfully requested.

**In item 3 on page 2 of the instant Office Action, the Examiner provisionally rejected claims 1-20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8, 10, and 12-23 of copending Application No. 10/682,790 in view of Spiegelman et al. (U.S. Patent No. 6,552,055). This rejection is respectfully traversed.**

Pursuant to M.P.E.P. § 804, “[i]f a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.” Thus, the Examiner is respectfully requested to withdraw this provisional obviousness-type double patenting rejection of the instant claims.

**Conclusion**

Applicant respectfully submits that the claims (1-14 and 16-19) are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6905 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

DENNIS A. CARSON ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6905

Date Feb. 9, 2006

By Monique M. Perdok Shonka  
Monique M. Perdok Shonka  
Reg. No. 42,989

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 9 day of February, 2006.

JONATHAN FERANSON

Name

Jonathan Ferguson

Signature